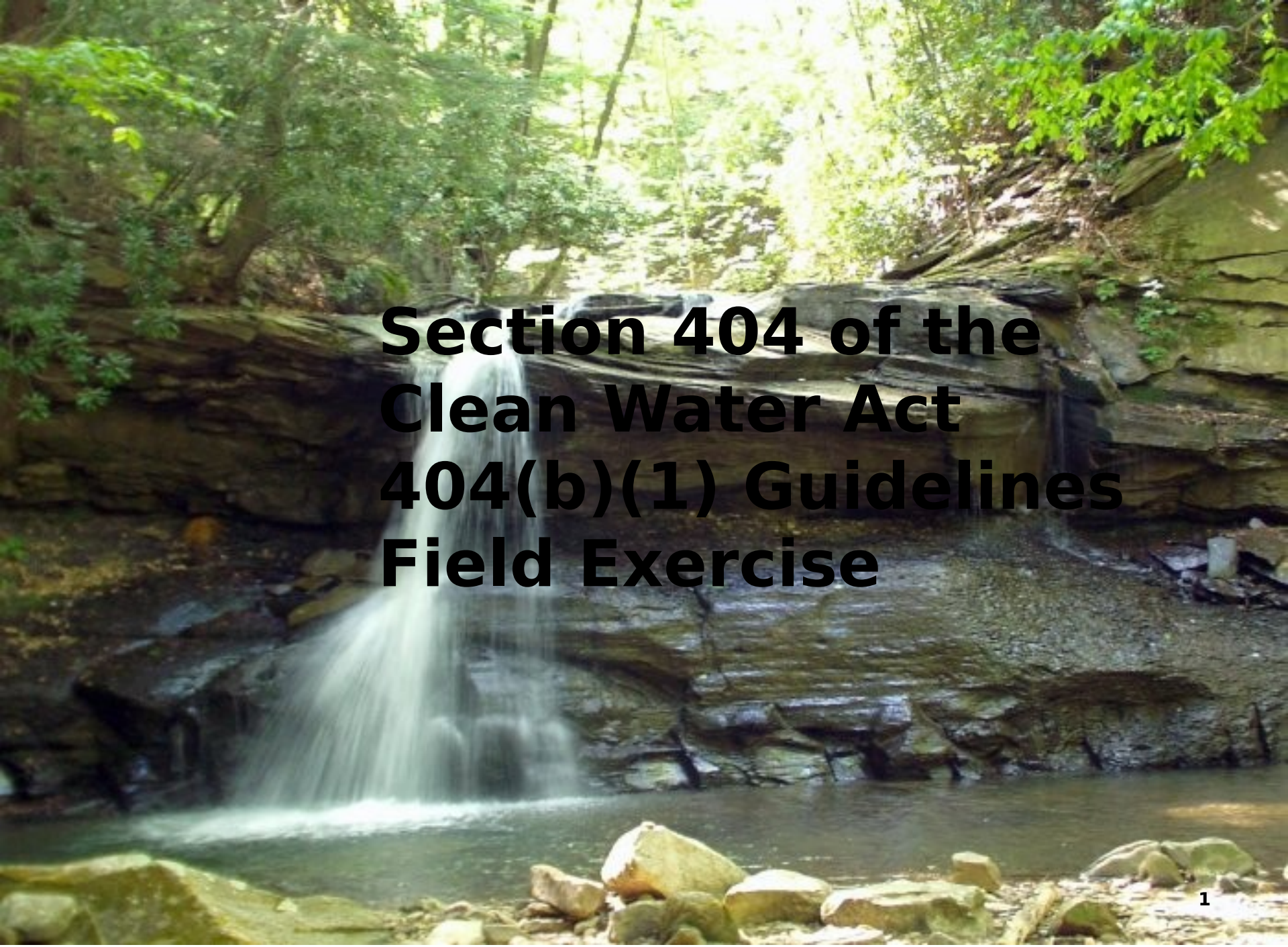


Section 404 of the Clean Water Act 404(b)(1) Guidelines Field Exercise

Section 404 (b)(1) Exercise

Objectives:

Understand the fundamentals of Section 404 of the CWA for Civil Works Purposes

Conduct Field Exercise with the Guidelines

Overview

- Section 404 of the Clean Water Act
- Waters of the U.S.
- Section 404(b)(1) Guidelines
- Compliance with the Guidelines

404(b)(1) Guidelines

- Developed by the Administrator of the EPA in concert with the Secretary of the Army for the specification of disposal sites in Waters of the US.
- Are binding regulations published by EPA at 40 CFR Part 230 on December 24, 1980
- Applied through:
  - The regulatory program of the U.S. Army Corps of Engineers through sections 404(a) and (e) of the Act

    (see 33 CFR Parts 320, 323 and 325)

Section 404(b)(1) Guidelines Overview (cont.)

- **The civil works program of the U.S. Army Corps of Engineers (see 33 CFR 209.145 and section 150 of Pub. L. 94-587, Water Resources Development Act of 1976);** and
- Permit programs of States approved by the Administrator of the EPA in accordance with section 404(g) and (h) of the Act (see 40 CFR parts 122, 123 and 124);
- Categorized into nine Subparts (A-I)

- Nation Wide General Permit (NWP) Exception.
  - Reporting is not required for activities under a NWP. The NWPs have their own NEPA and CWA Impact Evaluation.

404(b)(1) Guidelines Subparts *Bring Handout into Field*

- Subpart A-General
- Subpart B-Compliance with the Guidelines
- Subpart C-Potential impacts on Physical and Chemical Characteristics of Aquatic Ecosystem
- Subpart D-Potential Impacts on Biological Characteristics of the Aquatic Ecosystem
- Subpart E-Potential Impacts on Special Aquatic Sites
- Subpart F-Potential Effects on Human Use Characteristics
- Subpart G-Evaluation and Testing
- Subpart H-Actions to Minimize Adverse Effects
- Subpart I-Planning to Shorten Permit Processing Time

Definitions:

Dredged Material: any materia
excavated from waters of the U.S.

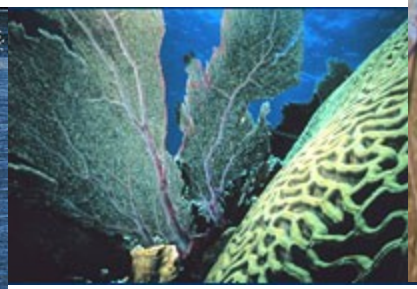
Fill Material: any material used for the primary purpose of replacing an aquatic area with dry land or of changing the bottom elevation of a water body or wetland with the intent to affect site hydrology; includes rock, soil, dirt, or similar material.

Definitions:

- **Waters of the U.S.**
  - navigable waters;
  - lakes; natural ponds;
  - rivers; streams (perennial, intermittent, and ephemeral)
  - mudflats; wetlands; wet meadows;
  - prairie potholes;
  - playa lakes;
  - Sloughs
  - Generally anything th
    will float a stick.

Definitions:

- Wetlands - an area inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances does support vegetation typically adapted for saturated soil conditions.
- Special Aquatic Sites- an aquatic area possessing special ecological characteristics of productivity, habitat, wildlife protection or other important or easily disrupted ecological values.



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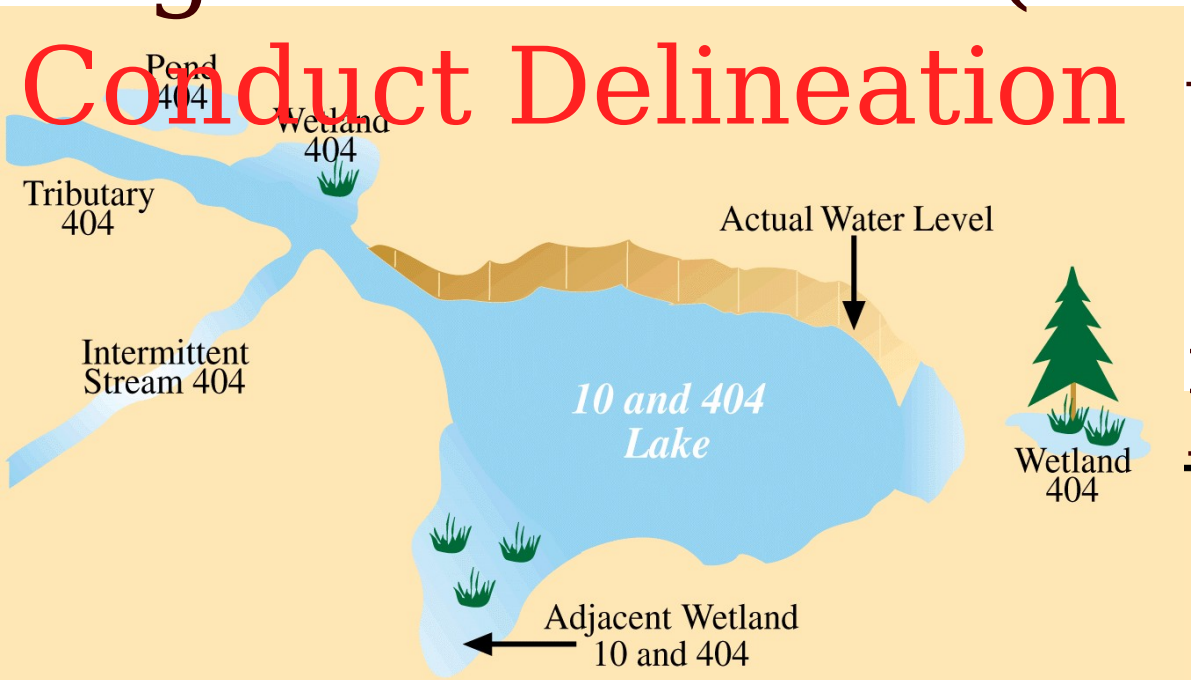
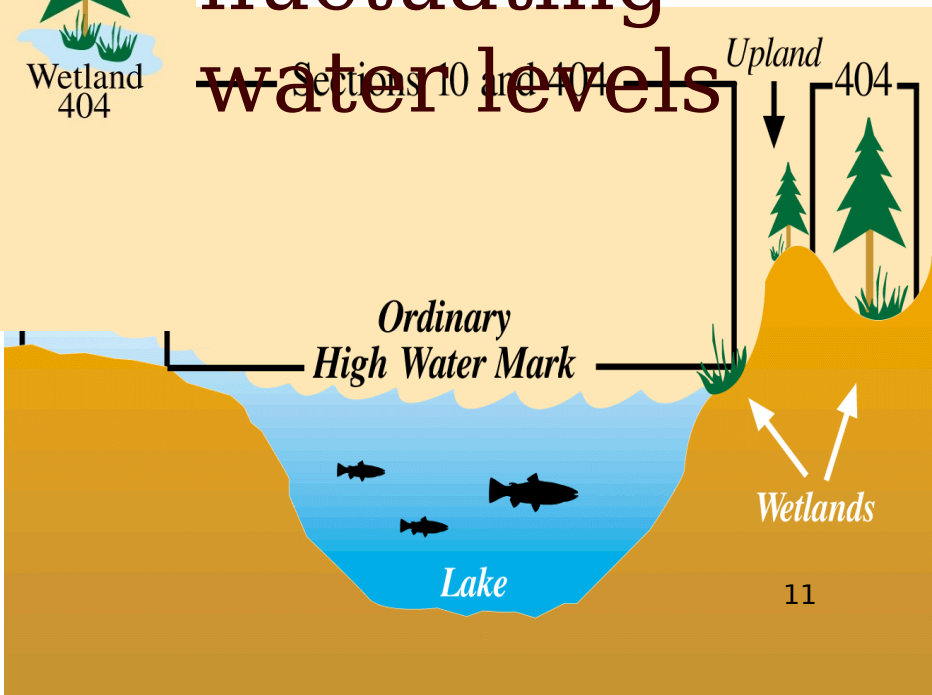
complexes CWA*

Waters of the U.S. – Ordinary High Water Mark (OHWM) –

Conduct Delineation



A line on the shore established by fluctuating water levels



and indicated by physical or floristic characteristics.

Quantify or Affected Environment in Feasibility Study – Impacts to be

Regulated Activities:

- All discharges of dredged or fill material
- Temporary or permanent discharges
- Examples include riprap, road crossings, access fills, jetties, levees, breakwater, erosion control, beach nourishment (disposal of dredged material into waters of the U.S.)
- Includes Civil Works Projects designed for the purpose of affecting site hydrology.

Compliance Restrictions of the Guidelines

- Discharges shall not be permitted if there is a practicable alternative with less adverse impacts or one that is not water dependent.
  - **Practicable-** “available and capable of being done consistent with costs constraints, existing technology, logistics and overall project purpose”.
  - **Water Dependency** - When impact is within a special aquatic site, and water dependency is required to achieve project purpose.
  - **Alternative Analysis-** An analysis that identifies the least environmental damaging practicable alternative that meets the project purpose (LEDPA).

Compliance with the Guidelines (other considerations)

- No discharge shall be permitted if it:
  - Violates any applicable toxic effluent standard or prohibition (under section 307 of the CWA) (WDR/NPDES)
  - Jeopardizes the continued existence of endangered or threatened species under ESA or results in likelihood destruction or adverse modification of designated critical habitat (ESA Compliance)
  - There is not sufficient information to determine compliance with the guidelines
  - Violations of any applicable water quality standard (Federal WQ Standards and Section 401 WQ Certification state standards).

Compliance Documentation of Practicable Alternatives Handout 7 & 8

- Supports rationale for selection of the alternative identified as least environmentally damaging
- Presents both adverse and/or beneficial impacts
- Describes Actions to Minimize Adverse Effects
- Identifies alternatives having no significant difference in impact from the least environmentally damaging practicable alternative.

- This can take the form of an alternative analysis in a NEPA document and referenced in the CWA "Short Form" – or stand alone 404 Analysis.

HO #s 7& 8 Specification of Disposal/Fill

- HO #8 Documents Guideline's Compliance
  - Potential Impacts on Physical and Chemical Characteristics of the Aquatic Ecosystems
  - Potential Impacts on Biological Characteristics of the Aquatic Ecosystems
  - Potential Impacts on Special Aquatic Sites
  - Proposed Disposal Site Determinations
  - Determination of Cumulative Effects
  - Determination of Secondary Effects
  - Description of actions taken to minimize impacts

Mitigation Under the 404(b)(1) Guidelines

- Mitigation Requirements
  - Compensatory mitigation may not be used as a method to reduce environmental impacts in the identification of the least environmentally damaging practical alternative.
  - Habitat development and restoration techniques can be used to minimize adverse impacts and to compensate for destroyed habitat 40 CFR 230.75
  - Mitigation Banks 1st priority under WRDA 2007
  - Watershed location to the extent practicable

Conclusion

- Identify the Least Environmentally Damaging Practical Alternative (LEDPA)
- 404 Compliance Analysis
  - Defines project purposes and range of alternatives that meet those purposes
  - Provide s factual determinations for each alternative
  - Determines direct, indirect, and cumulative impacts
  - Identifies mitigation measures
  - All disclosed in or derived from your NEPA document
- Complements other regulatory requirements

Questions...